

Remarks:

Reconsideration of the application is requested.

Claims 1-12 remain in the application.

In the third paragraph on page 2 of the above-identified Office action, claims 1, 3, 5, 7, 8, 10, and 11 have been rejected as being indefinite under 35 U.S.C. § 112.

More specifically, the Examiner has stated that the claims are incomplete for omitting essential structural cooperative relationships of elements, such omissions amounting to a gap between the necessary structural connections. The Examiner stated that the omitted structural cooperative relationships are: claim 1 the wall is defined as including an evacuated space. The Examiner continued to state that claim 1 also defines a tube with two ends, one end sealed to a wall enclosing the space at an aperture in the wall. The Examiner stated that the other end of the tube is not accounted for in the claim. The Examiner further stated that the other apertures, if the "at least one wall having an aperture" includes another aperture in another wall with a tube end attached, is not defined as sealed. The Examiner stated that therefore the enclosed space as defined is not a sealed space but is open to the surrounding atmosphere. Claim 1 has been

amended so as to facilitate prosecution of the application.  
Therefore, the rejection of claim 1 is now moot.

In the second paragraph on page 3 of the Office action, the Examiner stated that the terms "given" and "corresponding" in claims 11 and 12 are relative terms, which render the claim indefinite. The Examiner further stated that the terms "given" and "corresponding" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is respectfully noted that the Examiner is in error. The word "given" in standard, acceptable, U.S. claim language is merely used to indicate that the same item is being referred to twice. In this case, it is used in claim 11 to indicate that the same material is discussed at both locations. "Given" could be replaced by a word such as "first" and fulfill the same purpose.

Webster's Third New International Dictionary, in pertinent part, defines "corresponding" as "agreeing in kind, degree, position, function, or other respects". Therefore, this term is clear in meaning (see the enclosure).

It is also noted that neither term is a relative term, contrary to the Examiner's statement. Words such as "large"

or "small" are relative terms. The Examiner is requested to consult with his supervisor in this regard.

In the second paragraph on page 4 of the Office action, claims 1-12 have been rejected as being obvious over Nakada et al. (Japanese Application No. 01012347) in view of Comstock (presumed to be U.S. Patent No. 1,898,977), O'Leary (U.S. Patent No. 2,119,438), and Schmidberger (DE 1004207) under 35 U.S.C. § 103.

As will be explained below, it is believed that the claims were patentable over the cited art in their original form and the claims have, therefore, not been amended to overcome the references.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claim 1 calls for, inter alia:

"a tube section including two end sections, at least one of said two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner at said aperture of said at least one of said two outer covering layers and being formed to compensate for

positional imprecisions between said aperture and said tube section."

The Nakada et al. reference discloses a heat insulating body having an open space (3) filled with heat insulating material (11). After the filling process a Hansen's plug (12) is inserted into the open-cell heat insulating material (11) through a pouring port (4) and the space (3) surrounding the plug is sealed by a sealing material (10).

On pages 8 and 9 Comstock describes a non-conducting bridge that is illustrated primarily in Figs. 4 and 5.

The Examiner's statement that "Nakada shows at least one aperture 4 and a tube 12 apparently sealed to one wall at the aperture by a flange 10" is incorrect. Claim 1 calls for "a tube section including two end sections, at least one of said two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner". As disclosed, the sealing material (10) of Nakada is only a seal, and furthermore, it is not at the end section of the tube. Therefore, the sealing material (10) cannot be considered a flange-shaped expanded and flattened region fixed in a vacuum-tight manner, as claimed in claim 1 of the instant application.

The references do not show or suggest a tube section including two end sections, at least one of the two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner at the aperture of the at least one of the two outer covering layers and being formed to compensate for positional imprecisions between said aperture and said tube section, as recited in claim 1 of the instant application.

The Nakada et al. reference discloses a tube (12), which is inserted into the heat insulating material (11) and is sealed by a separate sealing material (10) around the midsection of the tube (12). The sealing material (10) disclosed by the Nakada et al. reference is not a flange-shaped expanded and flattened region, as claim in the instant application. Furthermore, the tube (12) that is inserted into the heat insulating material (11) disclosed by the Nakada et al. reference is not a tube that is fixedly attached to the outer wall in a vacuum-tight manner as claimed in the instant application. Therefore, the tube disclosed by the Nakada et al. reference is not a tube section including two end sections, at least one of the two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner at the aperture of the at least one of the two outer covering layers and being formed to compensate for positional imprecisions

between said aperture and said tube section, as recited in claim 1 of the instant application.

Regarding the Comstock reference, it is still noted that Comstock states on page 1, line 98, to page 2, line 20, that at the time of his invention it was "extremely difficult to provide absolutely air or gas-tight housings of considerable size in commercial quantities, especially when these vacuum containers are partially formed of metal sheets with soldered and/or welded joints or seams." Since the spool-like bridges are welded to the housing, the statement would include the welded joints of the spool like bridges cited by the Examiner.

The Comstock reference also does not disclose the claimed structure that the at least one of the two end sections has a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner. As can clearly be seen from Fig. 4, the end region is not flattened, the end region is shown having the same cross sectional thickness as the walls of the spool like bridge.

Furthermore, nowhere does Comstock disclose or suggest any aspect of positional tolerance correction, let alone describe a tube section end that compensates for positional imprecisions between the aperture and the tube section as set forth in the last paragraph of claim 1. Therefore, the

reference does not show or suggest a tube section including two end sections, at least one of the two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner at the aperture of the at least one of the two outer covering layers and being formed to compensate for positional imprecisions between said aperture and said tube section, as recited in claim 1 of the instant application.

Since the Comstock reference and the Nakada et al. reference do not disclose all the structural features of the tube section as claimed in the instant application, a combination of the references cannot obviate the claims of the invention of the instant application.

It is noted that the O'Leary and Schmidberger references do not make up for the deficiencies of the Nakada et al. and Comstock references.

A critical step in analyzing the patentability of claims pursuant to 35 U.S.C. § 103 is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614,1617 (Fed. Cir. 1999). Close adherence to this methodology is especially important in

cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher." Id. (quoting W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983)).

Most if not all inventions arise from a combination of old elements. See In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. See id. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See id. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the appellant. See In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 163.5, 1637 (Fed. Cir. 1998); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. See Dembiczak, 175 F.3d at 999, 50



USPQ2d at 1617. In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. See WMS Gaming, Inc. v. International Game Tech., 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999). The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem, to be solved as a whole would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981) (and cases cited therein). Whether the examiner relies on an express or an implicit showing, the examiner must provide particular findings related thereto. See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. Broad conclusory statements standing alone are not "evidence." Id. When an examiner relies on general knowledge to negate patentability, that knowledge must be articulated and placed on the record. See In re Lee, 277 F.3d 1338, 1342-45, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002).

Upon evaluation of the examiner's response, it is respectfully believed that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims. Accordingly, the examiner is requested to withdraw the rejection.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claim 1. Claim 1 is, therefore, believed to be patentable over the art and since all of the dependent claims are ultimately dependent on claim 1, they are believed to be patentable as well.

In view of the foregoing, reconsideration and allowance of claims 1-12 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel respectfully requests a telephone call so that, if possible, patentable language can be worked out.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$110 in accordance with Section 1.17 is enclosed herewith.

Please charge any other fees which might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner & Greenberg P.A., No. 12-1099.

Respectfully submitted,

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For Applicant(s)

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Marked-up Version of the Claims:

Claim 1 (four times amended). A heat insulated wall,  
comprising:

a connecting profile;

an evacuable heat insulating material;

two outer covering layers having contours and disposed at a distance from one another, said two outer covering layers connected to one another in a vacuum-tight manner by said connecting profile running along said contours, said two outer covering layers together with said connecting profile enclosing an [evacuated] intermediate space filled with said evacuable heat insulating material, at least one of said two outer covering layers having an aperture formed therein; and

a tube section including two end sections, at least one of said two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner at said aperture of said at least one of said two outer covering layers and being formed to compensate for positional imprecisions between said aperture and said tube section.